Filed 7/26/19 Outfront Media LLC v. Mack CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

OUTFRONT MEDIA LLC,

Plaintiff and Respondent,

v.

NOVELETTE MACK,

Defendant and Appellant;

HAPPY SKY, INC.,

Defendant and Respondent.

HAPPY SKY, INC.,

Cross-complainant, Cross-defendant, and Respondent,

v.

NOVELETTE MACK,

Cross-defendant, Cross-complainant, and Appellant.

B280631

(Los Angeles County Super. Ct. No. BC582804)

APPEAL from a judgment of the Superior Court of Los Angeles County, Honorable Melvin D. Sandvig, Judge. Affirmed.

Novelette Mack, in pro. per., for Defendant, Cross-complainant, Cross-defendant, and Appellant Novelette Mack.

Anderson, McPharlin & Conners, Vanessa H. Widener, and Lisa Anne Coe for Defendant, Cross-complainant, Cross-defendant, and Respondent Happy Sky, Inc.

No appearance for Plaintiff and Respondent Outfront Media LLC.

This case began as an interpleader action in which Outfront Media LLP sought direction as to whom it should pay for the lease of a billboard located on real property. Since 2005, competing claims regarding the ownership of the property have been the subject of four lawsuits involving appellant Novelette Mack and either Happy Sky, Inc. (Happy) or a purported predecessor in interest to Happy. Mack and Happy are the interpleader defendants in the instant action, but each also asserted cross-claims seeking to establish or confirm ownership of the property.

On appeal, Mack argues the trial court erred in denying her motion for reconsideration or, in the alternative, to set aside judgment. The motion requested the court reconsider its order granting summary judgment in favor of Happy on the interpleader claim, as well as the court's order striking Mack's late answer to Happy's cross-complaint. The motion further requested the court set aside as void a 2012 judgment in a previous action, based on which Happy acquired title.

A denial of a motion for reconsideration is not appealable. Even if we were to treat Mack's notice of appeal as seeking review of the underlying decisions for which Mack unsuccessfully sought reconsideration—that is, review of the court's order granting

summary judgment on the interpleader complaint and decision to strike Mack's answer to Happy's cross-claim—any such appeal would be untimely.

The court's denial of Mack's request that the 2012 judgment be set aside is not appealable either. Further, we reject Mack's argument that the 2012 judgment is void.

We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Nearly 15 years ago, Mack acquired real property located at 4601 West Slauson Avenue (the property). She no longer holds title to the property, however, as a result of a series of transactions and lawsuits, discussed below.[1]

A. *Events Leading up to the First Lawsuit Regarding the Property*

In 2004, Ma'Mees, Inc. (Ma'Mees) transferred title to the property to Mack. Mack recorded her quit claim deed on April 22, 2005, and on that same day, VII Series, Inc. (Series) obtained a loan secured by a deed of trust on the property in favor of Creative Investment (Creative). (See *Mack v. All Counties Trustee Services, Inc.* (2018) 26 Cal.App.5th 935, 937–938 (*All Counties*).)

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[1] In providing this factual background, we do not attempt to summarize the entire history of this decade-and-a-half long property dispute. Even if we were inclined to provide such a complete history, the record on appeal is insufficient for us to do so.

B. *First Lawsuit and Resulting 2007 Judgments*

In June 2005, Mack filed suit against Creative, Ma'Mees, and Series.[2] Mack sought to quiet title in the property as against all defendants, and asserted a fraud cause of action against Ma'Mees, Series, and Green. (See *All Counties, supra*, 26 Cal.App.5th at p. 938.)

Following a trial in which Series did not participate, the trial court entered a March 30, 2007 judgment finding that Mack was the sole owner of the property, and that the property was subject to the encumbrances of Creative and a company called Lantern Financial (March 2007 judgment). The March 2007 judgment further awarded Mack $190,429 in fraud damages against Green, Ma'Mees, and Series.

The court later vacated and set aside the March 2007 judgment "only as to . . . VII Series, Inc." based on insufficient notice of proceedings. Nevertheless, the court appears to have tried at least some of Mack's claims as against all defendants again in June/July 2007. The court again entered judgment against Series, Ma'Mees, and Green on Mack's fraud claims (the November 2007 judgment).

The November 2007 judgment also recognized the Creative and Lantern encumbrances. Specifically, "as to th[e] aspect of [Mack's quiet title and declaratory relief claims] that sought a declaration that [she] is the fee simple owner of the property and that she takes the property free and clear of all encumbrances,"

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[2] *Mack v. Ma'Mees, Inc., et al.* (Super. Ct. L.A. County, 2005, No. BC334258). Mack also named Traci Green, the owner of both Ma'Mees and Series, as a defendant in this action.

"the court enter[ed] judgment . . . [¶] . . . [i]n favor of Creative Financial and Lantern Financial" and "[i]n favor of VII Series."

C. *Foreclosure Sale to Kravich During the 2007 Trial*

The November 2007 judgment expressly declined to issue a broader ruling with respect to ownership of the property, however, because of events that transpired during the second 2007 trial. Although the record is incomplete with regard to these events, it appears that in July 2007, Creative foreclosed on the Series loan, and an individual named Joe Kravich purchased the property at a non-judicial trustee sale.[3] Kravich "was in court during some of the trial sessions," but neither Kravich, nor Mack, nor any of the defendants attempted to include Kravich in the proceedings. The November 2007 judgment states that it does not adjudicate Kravich's ownership rights, if any, with respect to the property. Neither party appealed the November 2007 judgment.

D. *Second Lawsuit and 2012 Judgment*

More than three years later, in January 2011, Mack filed another quiet title action regarding the property, this time suing Creative, Kravich, and others.[4] Kravich filed a cross-complaint to quiet title against Mack.

On March 19, 2012, the court entered judgment in favor of Kravich on all claims and quieted title to the property in Kravich and his wife (2012 judgment).

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[3] As discussed below, Mack maintains that this apparent foreclosure sale to Kravich was fraudulent.

[4] *Mack v. Creative Investment Group, Inc., et al.* (Super. Ct. L.A. County, 2011, No. PC049981).

Mack appealed the 2012 judgment, but later requested the appeal be dismissed. This court granted her motion and dismissed the appeal.[5] Mack took no further appellate action.

E. Sale of Property to Happy and Third Lawsuit

In 2014, Kravich sold the property to Happy. In 2015, Mack filed an action to quiet title against Happy, which also asserted declaratory relief and fraud claims.[6] Happy demurred, and Mack did not oppose the demurrer. After hearing oral argument from all parties, the court sustained Happy's demurrer without leave to amend, and entered a judgment of dismissal. Mack filed a motion for reconsideration of this decision, which the court denied.

F. *Fourth Lawsuit: The Instant Interpleader Action*

Shortly after the court entered judgment in the third lawsuit, a company leasing billboard space on the property, Outfront Media, filed an interpleader action against Happy, Mack, and Kyrie Austin (an individual to whom Mack at one point attempted to transfer the property). The suit asked the court to resolve a dispute between Austin and Mack, on the one hand, and Happy on the other, as to who was entitled to lease payments. Happy and Mack filed cross-complaints in this action, each defendant seeking to quiet title and establish or confirm ownership of the property for itself.

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[5] The court, on its own motion, takes judicial notice of the appellate docket in *Mack v. Creative Investment Group, Inc., et al.* (app. dism. Nov. 18, 2013, B239751), an appeal from Los Angeles Superior Court case No. PC049981. This docket reflects the motion to dismiss discussed above.

[6] *Novelette Mack v. All Counties Trustee Services, Inc., et al.* (Super. Ct. L.A. County, 2015, No. BC564638).

Thus, the interpleader action, from which the instant appeal arises, involves three separate complaints: (1) stakeholder plaintiff Outfront Media's interpleader complaint against Mack and Happy, (2) Happy's cross-complaint against Mack and Austin, and (3) Mack's cross-complaint against Happy. We address, as necessary, the procedural background to each claim.

1. *Interpleader complaint*

The court granted Happy's motion for summary judgment on the interpleader claim on September 15, 2016. The court concluded there was no triable issue of fact as to whether Happy was entitled to receive Outfront Media's lease payments, because there was "[n]o triable issue of fact as to the ownership of the . . . [p]roperty. Happy Sky Inc. is the owner of the . . . [p]roperty, and Novel[e]tte Mack, her successors and assigns have no right, title or interest in [it]." The court entered final judgment on the interpleader complaint on October 26, 2016.

2. *Happy's cross-complaint to quiet title*

After Mack failed to timely answer or demur to Happy's cross-complaint, the court granted Happy's request for an entry of default against her on September 23, 2015. In November 2015, Mack moved to set aside the default, claiming that she thought the filing of her own cross-complaint served as a responsive pleading. In December 2015—with the motion to set aside the entry of default still pending and before the hearing took place—Mack filed an answer to Happy's cross-complaint. Happy moved to strike the answer, and on July 2, 2016, the court granted the motion. The record does not reflect whether or how the court ruled on Mack's motion to set aside the default, but on September 15, 2016, the court entered a default judgment against Mack on Happy's cross-claims.

3. Mack's cross-complaint to quiet title

Happy demurred to Mack's cross-complaint. After a hearing at which Mack was present and argued in opposition, the court sustained the demurrer without leave to amend. On May 27, 2016, the court entered a judgment of dismissal of Mack's cross-complaint.

G. *Denial of Mack's Motion for Reconsideration or, in the Alternative, to Set Aside Judgment*

Thereafter, in 2016, Mack moved the court to reconsider or set aside several court actions,[7] including: (1) the court's grant of summary judgment in Happy's favor on the interpleader claim, (2) the court's order striking Mack's answer to Happy's cross-complaint, and (3) the 2012 judgment quieting title in favor of Kravich. It is unclear whether Mack sought to set aside only the 2012 judgment, or also sought, as an alternative to her request for reconsideration, to set aside the summary judgment on the interpleader complaint and/or the default judgment on Happy's cross-claim as well.[8] In any event, the court denied all relief requested. The court's December 20, 2016 order explained that Mack had failed to identify any new facts or law supporting her motion, that the court no longer had jurisdiction to reconsider

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[7] Mack filed two such motions: one via her counsel and one in propria persona, after her counsel withdrew from the case. The record is unclear as to whether the latter is intended to replace or merely augment the former. The trial court considered arguments presented in both motions.

[8] The default judgment on Happy's cross-claims was entered after Mack's counsel filed Mack's first motion, but before Mack filed her second such motion in propria persona.

rulings on those claims for which judgment has been entered, and that there was no basis for concluding the 2012 judgment was void.

H. *The Instant Appeal*

Mack filed a notice of appeal on January 20, 2017, purporting to appeal from a "[j]udgment after an order granting a summary judgment motion." Mack's opening brief clarifies that, with this notice, she intended to appeal from the court's December 20, 2016 order denying her motion for reconsideration, or in the alternative, to set aside judgment, and we treat her appeal as such. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 59 ["notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from"].)

DISCUSSION

Mack's opening brief challenges the court's refusal to reconsider the summary judgment entered in Happy's favor on the interpleader claim and the order striking Mack's answer to Happy's cross-complaint, as well as the court's refusal to set aside the 2012 judgment as void. We lack jurisdiction to address her challenge to the motion for reconsideration rulings, and find no basis for Mack's contention that the 2012 judgment (or any other judgment referenced in her motion) is void.

A. *Denial of Motion for Reconsideration*

An order denying a motion for reconsideration is not independently appealable. (See Code Civ. Proc., § 1008, subd. (g); *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2008) 166 Cal.App.4th 1625, 1633 ["the prevailing view among appellate courts is that a denial of a motion for reconsideration is never appealable under any circumstances"].) Rather, to the extent "the order that was the subject of a motion for reconsideration is

appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order." (§ 1008, subd. (g).)

But even if we were to treat Mack's appeal as one from the orders underlying her failed motion for reconsideration—assuming for the moment that those orders striking Mack's answer to Happy's cross-claim and granting Happy's summary judgment motion on the interpleader complaint are otherwise appealable—her notice of appeal was not timely as to either. (See Cal. Rules of Court, rule 8.104(a)(1).) Likewise, Mack's notice of appeal would be untimely as to the judgments resulting from these orders—namely, the court's summary judgment on the interpleader complaint and default judgment on Happy's cross-complaint. Thus, we lack jurisdiction to consider Mack's appeal to the extent it challenges any of these decisions or the court's refusal to reconsider them.

B. *Denial of Motion to Set Aside 2012 Judgment*

"[A]n order denying a motion to vacate a judgment is generally not appealable; otherwise, an appellant would receive 'either two appeals from the same decision, or, if no timely appeal has been made, an unwarranted extension of time in which to bring the appeal.' " (*Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 690–691, quoting *In re Marriage of Brockman* (1987) 194 Cal.App.3d 1035, 1040.) Mack appears to be arguing that this rule does not apply, because the 2012 judgment is "void." Specifically, Mack argues that the 2012 judgment is void because it is "wholly inconsistent with [the November 2007 judgment]." According to Mack, this inconsistency reflects that the superior court issuing the 2012 judgment effectively reversed an earlier decision of a fellow superior court judge (the November 2007 judgment), thereby

violating the principles of res judicata and improperly acting as an appellate tribunal.

First, the record does not support Mack's claim that the two judgments are inconsistent. The November 2007 judgment quieted title in Mack, but subject to the bona fide encumbrances of Creative and Lantern. Creative represented to the court in 2007 that the property had been sold to Kravich, apparently as part of a foreclosure on Creative's encumbrance. Because Kravich was not made a party to the 2007 proceedings, the November 2007 judgment expressly *declined* to adjudicate any claims Mack might have against him. Years later, the 2012 judgment adjudicated just such claims and quieted title in Kravich and his wife. Mack's argument that Kravich was only able to purchase the property via a fraudulent foreclosure sale provides a basis on which a court might conclude the 2012 judgment is erroneous—but not a basis on which to conclude the judgment is void. (See *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660, quoting *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 119 [an order is void only if entered by a court that lacks " 'jurisdiction in its most fundamental or strict sense' " and acts despite " 'an entire absence of power to hear or determine the case' " or " 'an absence of authority over the subject matter or the parties.' "].) This is because " 'it is not the result reached which determines whether [or not a] judgment is void,' " but rather the competency of the court to pronounce *any* result. (*Kupfer v. Brawner* (1942) 19 Cal.2d 562, 564, quoting *Crew v. Pratt* (1897) 119 Cal. 139, 151].) A " ' "mere erroneous decision on a question of law, however important that question may have been in contemplation of the rights of the parties," ' " cannot render a judgment void—even if the error appears on the face of the judgment. (See *Wyoming Pacific Oil Co. v. Preston* (1959) 171 Cal.App.2d 735, 746, quoting *Gray v. Hall*

(1928) 203 Cal. 306, 314 [" ' "A judgment is never absolutely void if the court had jurisdiction of the subject matter and the person of the defendant no matter how erroneous it may be." ' "].) Mack does not question the court's general authority to adjudicate a title dispute regarding the property; indeed, as the plaintiff in the action leading to the 2012 judgment, Mack herself selected the court as one of competent jurisdiction to adjudicate the dispute. Nor does Mack question the court's jurisdiction over any party.

To support her argument that the court lacked jurisdiction to issue the 2012 judgment, Mack relies on *Ford v. Superior Court* (1986) 188 Cal.App.3d 737, 741 (*Ford*). *Ford* is inapposite. Unlike the decision at issue in that case, the 2012 judgment does not purport to "review and restrain the judicial act of another department of the superior court." (See *ibid.* [involving complaint seeking "order restraining the superior court and the clerk of the superior court from carrying out and executing [a] judgment which had been entered by the superior court in [another] case" which "cannot be done"].) Rather, the 2012 judgment adjudicates the property dispute Mack presented to it.

Thus, even assuming the 2012 judgment is incorrect in that it is based on a fraudulent foreclosure sale to Kravich—or, for that matter, assuming the 2012 judgment is erroneous in some other manner—this would not render it void.[9]

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[9] To the extent Mack argues that any other judgment is void based on the alleged voidness of the 2012 judgment, and/or to the extent she argues that any other judgment besides the 2012 judgment is void and should be set aside, her arguments likewise fail, because, as discussed above, Mack has not established that the trial court in this or any previous action lacked jurisdiction.

For whatever reason, Mack chose to abandon her appeal of the 2012 judgment,[10] through which she could have sought review of any perceived legal errors in that judgment. The time for an appeal from the 2012 judgment has long since passed, and we therefore lack jurisdiction to review any such perceived errors. (See Cal. Rules of Court, rules 8.104(a)(1), 8.104(b) & 8.60(d); *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674 [lack of timely notice of appeal deprives the reviewing court of "all power to consider the appeal on its merits"].) Finally, even if we were not barred from reviewing Mack's claims that the 2012 judgment is erroneous, the record does not provide a sufficient basis for assessing such claims.

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[10] During the hearing on this matter, Mack stated that she abandoned her 2012 appeal on the advice of counsel. This does not alter the consequences of her having failed to prosecute a timely appeal from that judgment.

DISPOSITION

The trial court's order denying appellant's motion for reconsideration or, in the alternative, to set aside judgment is affirmed. Respondent Happy Sky, Inc. shall recover its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

WEINGART, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.